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1771 N Street, N.W.
Washington, D.C. 20036
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August 9, 1991

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

HAND DELIVERY

Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: RM-7739, RM-7740, RM-7741

Dear Ms. Searcy:

Today, the National Association of Broadcasters ("NAB") is filing reply comments to the above-referenced rulemaking petitions. According to Section 1.419(c) of the Commission's Rules (47 C.F.R. § 1.419(c)), NAB need file an original and eleven (11) copies of its reply comments for one petition, and two additional copies for each of the other two petitions. In order to ease the copy-making burden on the Commission, we are filing three sets of an original and eleven (11) copies of our reply comments, one for each rulemaking petition.

Should any questions arise in connection with this matter, please call either Barry Umansky (429-5456) or me (429-5466).

Sincerely,



Terry L. Etter
Staff Attorney

Enclosures

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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AUG - 9 1991

In the Matter of)	
)	
Modification of Comparative)	RM-7739
Policy Statement)	
)	
Proposals to Reform the)	RM-7740
Commission's Comparative)	
Hearing Process to Expedite)	
the Resolution of Cases)	
)	
Amendment of the Commission's)	RM-7741
Policies on Preferences in)	
Comparative Broadcast Hearings)	

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**REPLY COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS**

Pursuant to Section 1.405 of the Commission's Rules,^{1/} the National Association of Broadcasters ("NAB")^{2/} submits these brief Reply Comments in the above-captioned petitions.^{3/} These petitions promote similar ideas: that a party who locates an available channel be granted an "entrepreneur's preference" in

^{1/} 47 C.F.R. § 1.405 (1990).

^{2/} NAB is a nonprofit, incorporated association of radio and television broadcast stations and networks. NAB serves and represents America's radio and television stations and all the major networks.

^{3/} See Public Notice, Petitions for Rulemaking Filed, Report No. 1850, released June 24, 1991. RM-7739 was assigned to a petition for reconsideration of the dismissal of a petition for rulemaking filed in 1987 by Gerald Proctor. RM-7740 is the FCC file number for the comments of Jeffrey Rochlis ("Rochlis") on a petition for reconsideration in Gen. Docket No. 90-264. RM-7741 is a petition for rulemaking filed by Larry G. Fuss on May 16, 1991. NAB filed in support of the Fuss petition. See Comments in Support of Petition for Rulemaking filed by NAB on July 25, 1991.

comparative hearings for licensing the channel. NAB supports this concept and urges the Commission to commence a rulemaking proceeding with an eye toward implementing such an entrepreneur's preference.

All three proposals call for the grant of a weighted, rather than dispositive, entrepreneur's preference. Such a preference scheme would help to reward those who seek out new frequency allocations, but not be the sole determinative factor in the comparative process.^{4/} As we noted in our Comments in RM-7741, such a preference would further the public interest, would help promote Commission efforts to curb abuse of its comparative processes, and has sound legal backing.

The only opposition to any of the proposals was filed jointly by the National Association for the Advancement of Colored People ("NAACP"), the League of Latin American Citizens and the National Black Media Coalition.^{5/} Their opposition is based on two premises: (1) there is no need to provide additional incentives for entrepreneurs to seek out vacant channels, and (2) minority ownership would be disadvantaged by such a preference. Both are founded on false assumptions.

First, the opponents assume that "[t]here has never been any shortage of private parties seeking allocations of new channels" because "[d]ozens of such

^{4/} Only Rochlis has proposed a specific weighting to be given an entrepreneur's preference. See Rochlis Comments, supra note 3, at 5. NAB believes that the Commission should seek comments on the proper weight which should be given an entrepreneur's preference.

^{5/} See Opposition to Petition for Rulemaking, RM-7741, filed by NAACP, et al., on July 24, 1991.

proposals are made every year.^{6/} However, many of these allocations were made by the Commission itself, through its Docket 80-90 proceeding^{7/} and its implementation proceeding in Docket 84-231.^{8/} Many of the allocations which have come into existence through this proceeding are fallow or have resulted in stations which have floundered or gone silent.

Rather than focusing on "feasible" channels, most entrepreneurs would seek economically viable channels, in areas where additional service is likely to be needed or desired by the public and which have an economic base substantial enough to support an additional station. These channels would not necessarily be all in major markets, but in underserved areas as well. Contrary to the assertions of the opponents,^{9/} profit and the potential value of stations when sold are only two reasons why entrepreneurs seek to buy or build stations. The additional programming choices, the different point of view, and the enhancement to competition that the station can provide are other reasons for seeking an allocation. All these factors translate into better service to the public.

Second, the opponents apparently assume that a minority owner must necessarily be a party who is new to the broadcasting industry. However, current minority and female licensees may also be entrepreneurs. Like their non-minority colleagues, they too face a potential diversity demerit for comparative purposes. Therefore, some minority and female licensees also may be reluctant to seek out

^{6/} Id. at 3.

^{7/} Report and Order in BC Docket No. 80-90, 94 F.C.C.2d 152 (1983).

^{8/} First Report and Order in MM Docket No. 84-231, 101 F.C.C.2d 638 (1985).

^{9/} Opposition, supra note 5, at 4.

new allocations, because competing applicants could "doctor" their ownership structure simply to take advantage of the additional preferences that are currently available. The public therefore loses potential new service. The proposed entrepreneur's preference, however, would also provide such minority and female licensees with an impetus to seek out vacant channels and attempt to use their experience and economies of scale to better serve the public.

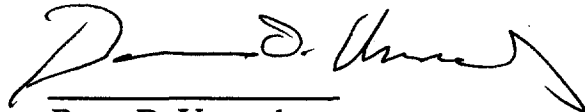
NAB finds merit in the proposals advanced in these proceedings. Therefore, we urge the Commission to move quickly in issuing a Notice of Proposed Rule Making seeking to implement an entrepreneur's preference.

Respectfully submitted,

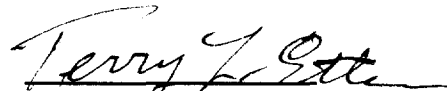
NATIONAL ASSOCIATION OF
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Henry L. Baumann



Barry D. Umansky



Terry L. Etter

Counsel

August 9, 1991

CERTIFICATE OF SERVICE

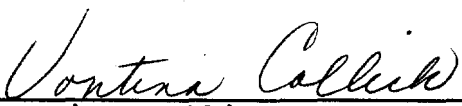
I, Vontina Collick, do hereby certify that a true and correct copy of the foregoing "Reply Comments of the National Association of Broadcasters" was sent via United States First Class mail, postage prepaid, on this 9th day of August 1991 to each of the following:

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Vontina Collick